



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
L. Michael Zinser

**AUG 20 2019**

Gallatin, TN 37066

RE: MUR 7113  
Power of Liberty, Inc.

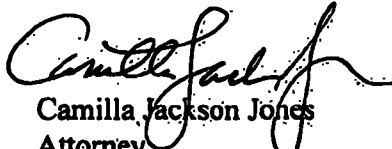
Dear Mr. Zinser:

This is in reference to the complaint you filed with the Federal Election Commission on July 26, 2017, concerning Power of Liberty, Inc. The Commission found that there was reason to believe Power of Liberty, Inc. violated 52 U.S.C. § 30104(f) of the Federal Election Campaign Act of 1971, as amended, and conducted an investigation in this matter. On July 30, 2019 a conciliation agreement signed by the respondent was accepted by the Commission. Accordingly, the Commission closed the file in this matter on July 30, 2019.

Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). A copy of the agreement with Power of Liberty, Inc. is enclosed for your information.

If you have any questions, please contact me at (202) 694-1507 or [cjacksonjones@fec.gov](mailto:cjacksonjones@fec.gov).

Sincerely,

  
Camilla Jackson Jones  
Attorney

Enclosure  
Conciliation Agreement  
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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6 **RESPONDENT:** Power of Liberty, Inc.

MUR: 7113

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9 **I. INTRODUCTION**

10 The Complaint alleges that Power of Liberty, Inc. ("Power of Liberty"), a 501(c)(4)  
11 organization, failed to disclose at least \$53,227 in electioneering communications disseminated  
12 by radio in Tennessee's Sixth Congressional District before the state's August 4, 2016,  
13 Republican primary election. A news article cited in the Complaint states that Power of Liberty  
14 also ran similar ads in Tennessee's Eighth district. Power of Liberty did not respond to the  
15 Complaint.

16 Based on the available information, the Commission finds reason to believe that Power of  
17 Liberty violated 52 U.S.C. § 30104(f) and 11 C.F.R. § 104.20(b).

18 **II. FACTUAL AND LEGAL ANALYSIS**

19 **A. Facts**

20  
21 Power of Liberty is a Tennessee non-profit corporation<sup>1</sup> and is not registered with the  
22 Commission. It was formed on May 2, 2016, by Steve Gill, an attorney and former  
23 Congressional candidate, who serves as the organization's registered agent.<sup>2</sup> Gill operates a  
24 media company, Gill Media, Inc., that develops advertisements.<sup>3</sup>

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<sup>1</sup> Complaint at 1, n. 1; Tennessee Secretary of State, Business Entity Detail for Power of Liberty, Inc.,  
<https://tnbear.tn.gov/Ecommerce/FilingDetail.aspx?CN=139155096101164166254078100083150060250152189118>.

<sup>2</sup> Tennessee Secretary of State, Business Entity Detail for Power of Liberty, Inc.,  
<https://tnbear.tn.gov/Ecommerce/FilingDetail.aspx?CN=139155096101164166254078100083150060250152189118>.

1 Representative Diane Black and former Tennessee State Representative Joe Carr were  
2 candidates in the August 4, 2016, Republican primary for Tennessee's Sixth Congressional  
3 District.<sup>4</sup>

4 In mid-July 2016, a news article cited in the Complaint reported that Power of Liberty  
5 disseminated "[a] wave of negative ads" targeting Republican primary election candidates in  
6 Tennessee's Sixth and Eighth districts.<sup>5</sup> On August 4, 2016, the date of the election, Power of  
7 Liberty filed a notice with the Commission disclosing a disbursement of \$34,690 on August 1,  
8 2016, for an electioneering communication for "income tax tv/per diem radio" that did not  
9 identify a corresponding federal candidate.<sup>6</sup> The Commission's Reports Analysis Division  
10 ("RAD") sent Power of Liberty a Request for Additional Information ("RFI") regarding the  
11 report, but Power of Liberty did not respond.<sup>7</sup>

12 The Complaint alleges that on or around June 27, 2016, Power of Liberty contracted with  
13 various radio stations in Tennessee to broadcast advertisements that referred to Black and Carr.<sup>8</sup>  
14 The Complaint attaches purported transcripts of two radio advertisements. The first describes  
15 inconsistencies between Black's public statements on several policy issues, including the federal

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<sup>4</sup> Black defeated Carr in the primary election and won the general election.

<sup>5</sup> Compl. at 1, n.3; <http://www.tennessean.com/story/news/politics/2016/07/14/diane-black-camp-slams-joe-carr-over-ads-dark-money-group/87060492/>.

<sup>6</sup> 24 Hour Notice of Disbursements/Obligations for Electioneering Communications, Power of Liberty (Aug. 4, 2016), <http://docquery.fec.gov/pdf/312/201608049022178312/201608049022178312.pdf>.

<sup>7</sup> <http://docquery.fec.gov/pdf/909/201608310300057909/201608310300057909.pdf>.

<sup>8</sup> Compl. at 1 (Aug. 19, 2016); <http://www.tennessean.com/story/news/politics/2016/07/14/diane-black-camp-slams-joe-carr-over-ads-dark-money-group/87060492/>.

- 1 debt and immigration, and her congressional voting record.<sup>9</sup> The second advertisement  
2 unfavorably compares Black's congressional voting record on immigration with Carr's state  
3 legislative record.<sup>10</sup>
- 4 Complainant alleges that the two radio advertisements aired continuously from  
5 June 27, 2016, on stations that reach voters in the Sixth District and that FCC records suggest  
6 that Power of Liberty spent \$67,422 on the advertisements.<sup>11</sup> Based on the assumption that an

<sup>9</sup> The complaint provides the following transcript:

18-year incumbent, career politician Diane Black says Congress is full of hot air from politicians who say the right thing but don't do the right thing. That's exactly what *she* does. Diane Black says 'she voted against the Boehner-Obama budget' but the *Congressional Record* shows she voted for it. She says 'she voted against the crony capitalism at the Ex-Im Bank' but the Heritage Action scorecard shows she voted for it twice! She says 'she voted against higher spending and debt' but the truth is that our national debt has increased by over six trillion dollars since she's been in Congress thanks to her votes for more spending and higher debt. She says 'she helped write the law requiring accountability metrics in border security,' but her voting record shows she voted to give driver's licenses to illegal aliens. Call 18-year career politician Diane Black at (202) 225-4231. Tell her to stop spewing congressional hot air and tell the truth. Career politician Diane Black's record makes one thing clear: she's not the solution to the problems in Washington, she *is* the problem. Paid for by Power of Liberty Inc. powerofliberty.us. Not affiliated with nor approved by any campaign or campaign committee.

Compl., Attach. A.

<sup>10</sup> The complaint provides the following transcript:

[UNINTELLIGIBLE] politicians like Diane Black is double talk. The border remains unsecured and the illegals continue to come. Call Diane Black today. (202) 225-4231. Tell her we need more than just tough talk on immigration, we need action. Be sure to ask her if she's so tough on illegal immigrants, why'd she vote to give illegals Tennessee driver's licenses? Paid for by Power of Liberty Inc. powerofliberty.us. Not approved by any candidate or candidate committee. Conservative Joe Carr is standing firm against the Washington establishment. While professional politicians talk tough about illegal immigration, Joe Carr has taken action to secure our borders, preserve our jobs, and protect our communities. As a legislator, he wrote and passed bills to block sanctuary cities in Tennessee and to require verification of legal status to get a job or taxpayer benefits. Call Joe Carr today. (615) 200-0681. And thank him for standing firm against the Washington insiders who refuse to secure our border and enforce our laws.

Compl., Attach. B. Because the disclaimer for this advertisement appears in the middle of the transcript, it is unclear whether the transcript is describing one advertisement or two.

<sup>11</sup> Compl. at 2 (citing Federal Communications Commission, Licensing and Databases: Public Inspection Files, available at <https://publicfiles.fcc.gov/>). The Complaint claims that it obtained payment information from FCC public files and cited to specific amounts that Power of Liberty paid to seven radio stations. Compl. at 2, n.4. The Complaint, however, did not include any of the corresponding invoices or other documents.

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1 equal number of the Power of Liberty advertisements ran each day, Complainant estimates that  
2 Power of Liberty spent at least \$53,227.89 of the \$67,422 in disbursements during the 30-day  
3 period before the August 4, 2016, primary election.<sup>12</sup> As mentioned above, Power of Liberty  
4 filed only one electioneering communication report disclosing a disbursement of \$34,690; that  
5 report was two days late and incomplete, and it remains uncorrected.<sup>13</sup>

6 The news article mentioned above also referred to an advertisement run by Power of  
7 Liberty in Tennessee's Eighth District.<sup>14</sup> The radio advertisement referenced Brian Kelsey, a  
8 state senator and candidate in the 2016 Republican Eighth District primary election, and the  
9 advertisement reportedly reads, "As illegals continue to pour across our open borders, Senator  
10 Brian Kelsey has a simple plan to deal with illegal immigration: Send illegal immigrants to  
11 college and send Tennessee taxpayers the bill!"<sup>15</sup> The article further reported that the radio  
12 advertisements have been "punching" Greer, a Tennessee businessman.<sup>16</sup> FCC public files show  
13 that Power of Liberty spent \$7,050 on August 1, 2016, three days before the primary election, to  
14 run a television advertisement about "Tax policy, including state income tax in Tennessee" that  
15 referred to Kustoff.<sup>17</sup>

16 Power of Liberty did not respond to the Complaint.

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<sup>12</sup> Compl. at 2, 4.

<sup>13</sup> Compl. at 2. Power of Liberty has not filed any other additional electioneering communication reports.

<sup>14</sup> Compl. at 1, n.3.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> [https://publicfiles.fcc.gov/find/power%20of%20liberty/page-offset-0/order-best-match/filter-\[\]/files](https://publicfiles.fcc.gov/find/power%20of%20liberty/page-offset-0/order-best-match/filter-[]/files).

**B. Legal Analysis**

An "electioneering communication" is any "broadcast, cable, or satellite communication" that references a "clearly identified" federal candidate, is distributed "within 30 days before a primary . . . election" and is "targeted to the relevant electorate."<sup>18</sup> "Broadcast, cable, or satellite communication" includes any communication publicly distributed over a radio station.<sup>19</sup> Every person who pays for the "direct costs of producing and airing electioneering communications in an aggregate amount in excess of \$10,000 during any calendar year shall, within 24 hours of each disclosure date, file with the Commission" an appropriate disclosure report.<sup>20</sup>

The radio advertisements identified in the Complaint that ran within 30 days before the August 4, 2016, primary (allegedly costing at least \$53,228) are electioneering communications. The sworn complaint, to which Power of Liberty did not respond, specifically alleges that "Power of Liberty contracted with a variety of radio stations . . . to broadcast certain advertisements . . . from June 27, 2016 until August 3, 2016," and that "the [a]dvertisements . . . aired continuously."<sup>21</sup> The advertisements named federal candidates Black and Carr, and targeted the relevant electorate in the Sixth Congressional District. As such, Power of Liberty was required to file an electioneering communication report after it paid for or contracted to spend over \$10,000 for any of the radio advertisements.<sup>22</sup>

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<sup>18</sup> 52 U.S.C. § 30104(f)(3); 11 C.F.R. § 100.29(a).

<sup>19</sup> 11 C.F.R. § 100.29(b)(1).

<sup>20</sup> 52 U.S.C. § 30104(f)(1); 11 C.F.R. §§ 104.5(j), 104.20(b).

<sup>21</sup> Compl. at 1-3.

<sup>22</sup> 52 U.S.C. § 30104(f)(5); 11 C.F.R. § 104.20(a).

1           Additionally, a news article cited in the Complaint indicates that Power of Liberty also  
2   disseminated at least an additional radio advertisement referencing a federal candidate in the  
3   Eighth District during the 30-day pre-primary electioneering communication window. Notably,  
4   a radio advertisement distributed sometime in July 2016 reportedly stated: "As illegals continue  
5   to pour across our open borders, Senator Brian Kelsey has a simple plan to deal with illegal  
6   immigration: Send illegal immigrants to college and send Tennessee taxpayers the bill!" This  
7   radio advertisement appears to be an electioneering communication — it names a federal  
8   candidate (Kelsey), and it targeted the relevant electorate. Therefore, Power of Liberty may also  
9   have been required to file electioneering communication reports for these radio advertisements.  
10   As mentioned above, Power of Liberty filed only one electioneering communication report,  
11   which was late and incomplete, and it did not respond to an RFAI regarding the report, or to the  
12   Complaint.

13           The available information appears to show that Power of Liberty failed to file or correct a  
14   number of required reports for disbursements it made during the 30-day electioneering  
15   communication window. As such, the Commission finds reason to believe that Power of  
16   Liberty, Inc. violated 52 U.S.C. § 30104(f) and 11 C.F.R. § 104.20(b).

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**MUR 7113**

GENERAL COUNSEL  
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1. Respondent paid \$63,125 for radio advertisements that aired within 30 days of the August 4, 2016 Tennessee Republican primary election. The advertisements named several federal candidates and targeted the relevant electorate in the Sixth and Eighth Congressional Districts.



2. Respondent was required to file a disclosure report within 24 hours of the disclosure date each time it made one or more disbursements, or executed one or more contracts, to pay the costs of producing and airing electioneering communications that aggregated to exceed \$10,000 during the 2016 calendar year, as set forth in 52 U.S.C. § 30104(f) and 11 C.F.R. § 104.20(b).

3. Respondent spent \$53,839 to broadcast advertisements that referenced congressional candidates Diane Black and Joe Carr, which aired in the Sixth Congressional District in the 30 days before the primary election, but failed to timely file disclosures for these electioneering communications.

4. Respondent spent \$9,286 to broadcast advertisements that referenced congressional candidates Mark Luttrell and Brian Kelsey, which aired in the Eighth Congressional District in the 30 days before the primary election, but failed to timely file disclosures for these electioneering communications.

*Applicable Law*

5. The Act defines an "electioneering communication" ("EC") as any "broadcast, cable, or satellite communication" that references a "clearly identified" federal candidate, is distributed "within 30-days before a primary . . . election," and is "targeted to the relevant electorate." 52 U.S.C. § 30104(f)(3); 11 C.F.R. § 100.29(a). "Broadcast, cable, or satellite communication" includes any communication publicly distributed over a radio station. 11 C.F.R. § 100.29(b)(1). The Act provides that every person who pays for the "direct costs of producing and airing electioneering communications in an aggregate amount in excess of \$10,000 during any calendar year shall, within 24 hours of each disclosure date, file with the

Commission” an appropriate disclosure report. 52 U.S.C. § 30104(f)(1); 11 C.F.R. §§ 104.5(j), 104.20(b).

6. The regulation defines “disclosure date” as “the first date on which an electioneering communication is publicly distributed provided that the person making the electioneering communication has made one or more disbursements, or has executed one or more contracts to make disbursements [for ECs] aggregating in excess of \$10,000” or “any other date during the same calendar year” that the person making the EC has made one or more disbursements or executed one or more contracts for the direct costs of producing or airing ECs aggregating in excess of \$10,000, since the most recent disclosure date. 11 C.F.R. § 104.20(a)(i)-(ii). Thus, any disbursements for ECs that exceed \$10,000 and air within 30 days of an election must be disclosed to the Commission within 24 hours of the date on which the ECs are first distributed.

7. The 30-day window for EC reporting in this case began on July 4, 2016. During that period, Power of Liberty held contracts for and paid for ECs totaling \$63,125, which began airing in the Sixth and Eighth Districts on July 4. Of that amount, Power of Liberty should have disclosed \$60,490 in ECs, and it should have disclosed them on July 16, the day after Power of Liberty’s ads aggregating in excess of \$10,000 began airing. 11 C.F.R. § 104.20(b).

8. On August 4, 2016, Power of Liberty filed a single 24-Hour EC Statement for \$34,690 in disbursements, which disclosed \$32,055 in disbursements for ads that aired in July-August 2016, and \$2,635 in disbursements for radio ads made that aired August 1-3, 2016. Power of Liberty did not file any other 24-Hour Statements for its disbursements during the 2016 election.

V. Respondent failed to file timely disclosure reports for its electioneering communications, in violation of 52 U.S.C. § 30104(f) and 11 C.F.R. § 104.20(b).

VI. Respondent will take the following actions:

1. Respondent will pay a civil penalty of Six Thousand Dollars (\$6,000), pursuant to 52 U.S.C. § 30109(a)(5)(A).
2. Respondent will cease and desist from violating 52 U.S.C. § 30104(f) and 11 C.F.R. § 104.20(b).

VII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.


VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondent shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.


FOR THE COMMISSION:

Lisa J. Stevenson  
Acting General Counsel

BY:   
Charles Kitcher  
Acting Associate General Counsel  
for Enforcement

8/19/19  
Date

FOR THE RESPONDENT:

  
(Name) Steven L. Gill  
(Position) Chairman/CEO

July 10, 2019  
Date

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